IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.7.2007

CORAM:

THE HONOURABLE MR.JUSTICE ELIPE DHARMARAO
AND
THE HONOURABLE MR.JUSTICE S.PALANIVELU

Writ Appeal No.1208 of 2004

V.Veeramani ... Appellant/ Petitioner

Vs.

1.The Chief Security Commissioner,
Railway Protection Force,
Southern Railway,
Chennai.

2.The Divisional Security Commissioner,
Railway Protection Force,
Tiruchirapalli. ... Respondents/ Respondents

Writ Appeal preferred under Clause 15 of the Letters Patent, as against the order dated 9.3.2004 made in W.P.No.29111 of 2003 by the learned single Judge of this Court Petition under Article 226 of the Constitution of India to issue a writ of certiorarified Mandamus calling for the records of the respondent dated 23.9.2003 in memo No. SXT/P 227/R153/VV/6/2003 and quash the same as illegal and direct the respondents to pay all attended benefits from 1.9.2003 that is the date of his petition.

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For appellant : Mr.AR.L.Sundaresan,
Senior Counsel for
M/s.AL.Ganthimathi

For respondents : Mr.R.Thiagarajan,
Senior Counsel for
Mr.P.H.Aravind Pandian

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JUDGMENT

ELIPE DHARMARAO, J.

The appellant is the Inspector, Railway Protection Force. While he was working at Virudhachalam, on the written complaint dated 7.8.2003 lodged by the Old Iron Scraps and Auto parts Association, Neyveli, alleging that the petitioner/appellant threatened dealers of old iron scrap shops at Neyveli, Virudhachalam, Vadalur, Kurinjipadi and Sethiathope and by putting them under the fear of implicating in false cases, he has collected large sums of amounts from them, the Divisional Security Commissioner nominated the Assistant Security Commissioner by name Santharam to conduct a preliminary enquiry into the allegations, who had submitted his report on 26.8.2003 to the Divisional Security Commissioner, based on which the petitioner/appellant was placed under suspension by the order dated 1.9.2003. Since the Assistant Security Commissioner who held the preliminary enquiry could not record any statements from the persons connected with the complaint, since he do not know Tamil, the Divisional Security Commissioner instructed Mr.A.Chandrasekaran, Inspector, RPF on 9.9.2003 to record statements from the persons connected with the complaint and the said Inspector recorded statements from nine persons on 9.9.2003 and submitted his report to the Divisional Security Commissioner. Thereupon, a charge memo. dated 23.9.2003 was served on the petitioner/appellant, appointing one V.Raghunathan, Assistant Security Commissioner as the Enquiry Officer.

2. The petitioner/appellant filed the Writ Petition No.29111 of 2003, challenging the charge memo. dated 23.9.2003. Though many grounds have been urged by the petitioner, the main ground argued both before the learned single Judge and before us is that the charge memo. and the enquiry proceedings initiated based on such preliminary enquiry conducted by the Assistant Security Commissioner and the Inspector are fatally violating the provisions of Rule 248 of the Railway Protection Force Rules since a preliminary enquiry into a public complaint can be made against an Inspector of Force only by the Officer of the rank of Security Commissioner and above and in this case an Inspector and Assistant Security Commissioner had conducted the preliminary enquiry. The petitioner would further submit that the preliminary enquiry Officer Mr.Santharam has made a finding in the record of statements that he has enquired some other persons who were not mentioned in the complaint and also deposes against the officers. If it is so, the enquiry officer has travelled beyond the scope of preliminary enquiry and acted as an authority for the complainants and the mala fides can be

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easily identified that the enquiry officer who met the persons other than the complainant has deliberately not enquired the charged officials and there is no report or finding of the preliminary findings of the Assistant Security Commissioner available and only the statements recorded behind the back of the charged officials are available.

3. The respondents have submitted that the preliminary enquiry was ordered to unearth the truth and written statements were obtained from the complainant and with the very existence of the prima facie evidence, the Disciplinary Authority came to the conclusion that disciplinary action was warranted against the petitioner. As a general rule in the Code of Conduct and Discipline that the preliminary enquiry has nothing to do after the issue of the charge sheet as the record of the preliminary enquiry normally is not a part of the record of the regular departmental enquiry. Though not obligatory, there is no bar in citing the evidences collected during the preliminary enquiry including the officer who conducted the same being cited and relied on during regular enquiry, if they are relevant for the purpose of the Departmental Enquiry. The regular enquiry in the disciplinary proceedings commences after the issue of charge memo. where the delinquent will be given all the opportunity to defend himself and the requirements of Rule 248 of the RPF Rules are only directive. It is also submitted that in cases where searches are said to be illegal, the materials collected during such illegal searches are held admissible in evidence and hence the preliminary enquiry held by the Assistant Security Commissioner and the recording of statements by the Inspector of the persons connected with the complaint dated 7.8.2003 will not vitiate the regular enquiry in the disciplinary proceedings. It is also relevant to note that during the course of the disciplinary proceedings, it is open to the administration to ignore the materials collected during the preliminary enquiry.

4. The learned single Judge, while recording that the officers who conducted preliminary enquiry are not in the upper rank than that of the petitioner/appellant, has held that the preliminary inquiry is not judicial in character, but only a fact finding inquiry and it is desirable that competent persons are deputed for holding preliminary enquiry, has dismissed the writ petition, giving cause of action for the writ petitioner to prefer this writ appeal.

5. We have heard Mr.AR.L.Sundaresan, learned Senior Counsel for the appellant and Mr.R.Thiagarajan, learned senior counsel for the respondents.

6. Since the entire dispute is regarding the authenticity of

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the preliminary enquiry conducted by two officers, without going into other aspects of the case, we deem it appropriate to deal with only this aspect of the case. It is an admitted fact that the service conditions of the petitioner are governed by the Railway Protection Force Rules, 1987. Therefore, we deem it appropriate to extract the relevant rules, for better appreciation of the facts and circumstances of the case.

7. Rule 153.2.1 of the Railway Protection Force Rules, 1987 reads as follows:

> "Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against an enrolled member of the Force, it may itself inquire into or appoint an Inquiry Officer higher in rank to the enrolled member charged but not below the rank of Inspector, or institute a Court of Inquiry into the truth thereof." (emphasis supplied)

Rule 248.1 reads as follows:

> "Whenever a complaint against the misconduct of any member of the Force is received from the members of the public or where such complaint is received through a court wherein civil or criminal proceedings against a member of the Force have been instituted or otherwise, and controlling officer of such member of the Force is of the opinion that allegations are verifiable or otherwise an inquiry is called for, he may proceed to inquire himself into the complaint against a member of the Force specified in column (1) of the table below or depute any other officer as specified in the corresponding entry in column (2) of the said table:

TABLE

Members of the Force against whom complaints received (1)	Inquiry Officer (2)
Constables/Head Constables	Of and above the rank of Inspector
Sub-Inspector/Assistant Sub-Inspector	Of and above the rank of Assistant Commandant
Inspector/Assistant Security Commissioner	Of and above the rank of Security Commissioner
Security Commissioner or above	Chief Security Commissioner or the Additional or the Deputy Chief Security Commissioner, if so authorised by him

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8. The petitioner is an Inspector and therefore, according to Rule 248.1, the proper person to conduct the inquiry is the Security Commissioner. But, admittedly, in this case, the preliminary enquiry was conducted by the Assistant Security Commissioner and since he does not know Tamil, another Inspector was asked to record the statements from the concerned. Both these officers viz. Assistant Security Commissioner, who conducted the preliminary enquiry and the Inspector, who recorded the statements, are not the Officers 'higher in rank to the enrolled member charged viz. the petitioner/appellant herein' in terms of Rule 153.2.1. Therefore, it can, in no uncertain terms be held that the preliminary enquiry conducted by the Assistant Security Commissioner and the Inspector, who recorded the statements, is bad in law and consequently, the charge memo. issued to the petitioner/appellant based on such findings of the Assistant Security Commissioner and the Inspector is void ab initio, as has been rightly pointed out by the learned senior counsel for the petitioner. Therefore, all the actions initiated by the respondents, including suspension of the petitioner/appellant based on such illegal preliminary enquiry conducted by the Assistant Security Commissioner and the Inspector are bad in law and the petitioner/appellant is entitled to pay and attended benefits from the date of his suspension till the date of its revocation. Therefore, we are unable to accept the contention of the respondents that the preliminary enquiry has nothing to do after the issue of the charge sheet as the record of the preliminary enquiry normally is not a part of the record of the regular departmental enquiry, since the very basis of the charge memo. is the illegal preliminary enquiry conducted by the Assistant Security Commissioner and the Inspector.

9. In BABU VERGHESE AND OTHERS vs. BAR COUNCIL OF KERALA AND OTHERS [1999 (II) CTC 722], the Apex Court has held that 'if manner of doing a particular act is prescribed under any statute, act must be done in that manner or not at all.' In the case on hand also, when the procedure for conducting preliminary enquiry and contemplating regular departmental proceedings against the delinquent officers were contemplated by the Railway Protection Force Rules, the respondents cannot act contrary to the Rules and give a simple go-bye to the procedure contemplated.

10. The learned senior counsel for the respondents would submit that there is no violation of any principles of natural justice, calling for interference of this Court and that preliminary enquiry is intended to make out a prima facie case against the delinquent and all opportunities would be given to the delinquent during the regular enquiry. In support of his

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contentions, he placed reliance on the judgment of the Apex Court in MANAGING DIRECTOR, ECIL, HYDERABAD AND OTHERS vs. B.KARUNAKAR AND OTHERS [(1993) 4 SCC 727]. But, that is a case where no procedure for conducting preliminary enquiry was contemplated under the statute. Therefore, the proposition of law arrived at by the Apex Court in the above case cannot be applied to the case on hand.

11. The learned single Judge has placed reliance on the judgments of the Apex Court in (1) THE STATE OF PUNJAB vs. JAGIR SINGH, BALJIT SINGH AND KARNAM SINGH (AIR 1974 SC 1589) and (2) CHAMBAKLAL CHIMANLAL SHAH vs. UNION OF INDIA (AIR 1964 SC 1854) to dismiss the writ petition filed by the petitioner/appellant. In these two cases also, there was no procedure contemplated under statutes to conduct preliminary enquiry. Therefore, the propositions laid down by the Apex Court in the said judgments have no application to the facts of the present case, since as has already been adverted to supra, the entire procedure for conducting preliminary enquiry and the regular enquiry has been contemplated under the Railway Protection Force Rules.

Therefore, the order of the learned single Judge is set aside and this Writ Appeal is allowed. Writ Petition No.29111 of 2003 filed by the petitioner/appellant stands allowed, as prayed for. However, it is made clear that quashing the impugned charge memo. will not amount to relieving the petitioner/appellant from the allegations levelled against him and it is open to the respondents, if they so desire, to initiate disciplinary proceedings against the petitioner/appellant as per the rules and regulations according to law. We keep open all other points raised by both the parties, to be raised by them during the enquiry, if instituted. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

Rao

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To

1.The Chief Security Commissioner,
Railway Protection Force,
Southern Railway,
Chennai.

2.The Divisional Security Commissioner,
Railway Protection Force,
Tiruchirapalli.

1 cc to Mr.P. H. Arvindh Pandian, Advocate, sr. 46276
1 cc to mr.A.L. Gandhimthi, Advocate, sr. 46158

Judgment in W.A.No.1208 of 2004

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